



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
Jane Light

**SUBJECT: BERRYESSA BRANCH LIBRARY
PROJECT**

DATE: 06-23-04

Approved

Date

Council District: Citywide

REASON FOR ADDENDUM

In order to maintain progress on this project, staff recommends that Council approve this item at its June 29, 2004 meeting.

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to negotiate and execute any necessary agreements with Travelers Casualty & Surety Company, the surety for Dennis J. Amoroso Construction Company, Inc., and any construction contractor for completion of the Berryessa Branch Library Project at no additional cost to the City beyond \$4,876,538 and including the authority to negotiate liquidated damages.

CEQA: Negative Declaration, H02-007.

BACKGROUND

On February 25, 2003, Council awarded the Berryessa Branch Library Project, in the amount of \$6,648,600 to Dennis J. Amoroso Construction Company, Inc. ("DJA"). The project consists of the construction of a 26,000 square foot facility to house the new Berryessa Branch Library. The project began construction in April 2003, and the contractual completion date for the project was June 30, 2004. Currently the project is approximately 57% complete.

The City terminated DJA on March 30, 2004 because of DJA's failure to perform various of its obligations under the construction contract. The same day, the City made a written demand on Travelers Casualty & Surety Company ("Travelers") to perform its obligations to complete the project pursuant to the performance bond.

Once the City terminated DJA, Travelers started working with the City on a plan to complete the project. This has included Travelers contacting the subcontractors who worked for DJA about

continuing to perform work on the project. It has also included Travelers performing a walk through of the project site with general contactors who are interested in completing the project.

ANALYSIS

The performance bond for the project obligates Travelers to complete the project. When a public works contract is terminated because of lack of performance and the completion of the project is tendered to the surety, the project may be completed without further competitive bidding.

There are two basic approaches that Travelers can take to meet its obligations under the performance bond. Under one approach, Travelers would tender money to the City for the City to hire a new contractor to complete the project. This approach necessitates the City entering into an agreement or agreements with Travelers and a new general contractor to complete the project.

Alternatively, Travelers can directly contract with the new completion contractor. This approach would only necessitate the City entering into one or more agreements with Travelers. Travelers has thus far indicated to the City that it intends to meet its obligations to complete the project using this approach. Staff believes that this is an appropriate way to proceed on this project given the amount of work remaining.

Staff is requesting the City Council to authorize the City Manager to negotiate and execute one or more agreements with Travelers, and if need be, with any new general contractor, as necessary for the completion of the project. The terms of any such agreements will address such issues as a completion schedule, the payment of moneys from the City to Travelers or vice versa, and how to handle construction defects in the project and change orders from the City. Importantly, the totality of any agreements negotiated and executed by the City Manager could not require the City to pay for completion of the project more than the unpaid balance of contract plus unexpended contingency for the project, which is \$4,876,538.

The payment of liquidated damages will also need to be addressed in any agreement with Travelers given that the project is so far behind schedule. The City has incurred significant additional costs as a result of the project not yet being completed. The delegation of authority being requested would include the authority of the City Manager to negotiate the liquidated damages if appropriate in the furtherance of completing the project.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum was coordinated with the Planning, Building and Code Enforcement Department, City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

There are no additional costs to the City relating to this agreement, except for added City staff costs necessary for administering the agreement.

CEQA

Negative Declaration, H02-007.

KATY ALLEN
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Director , Library Department

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